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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
DA SETH, AKA DANIEL SETH,
Defendant.

) Case No. CR 17-0480 MMC
)
) UNITED STATES' SENTENCING
) MEMORANDUM
)
) Date: January 31, 2018
) Time: 2:15 p.m.
)
) Hon. Maxine M. Chesney
)
)

INTRODUCTION

The United States respectfully requests that this Court accept the plea agreement submitted by the parties under Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. On January 31, 2018, the defendant, Da Seth, will stand before the Court to be sentenced following his plea to Count One of the Indictment, false statement in application and use of passport, in violation of 18 U.S.C. § 1542, and Count Two of the Indictment, possession of identification document to defraud the United States, in violation of 18 U.S.C. §§ 1028(a)(4) and 1028(b)(5). The defendant pled guilty on October 25, 2017.

The government is in agreement with Probation's sentencing recommendation of three years of probation with the special condition of community confinement for three months to be followed by three months of home detention, among the other recommended conditions. The government believes that this sentence is sufficient, but not greater than necessary, to achieve the sentencing goals of 18 U.S.C. § 3553(a).

THE DEFENDANT'S OFFENSE CONDUCT

7 On December 1, 2016, Da SETH applied for a United States passport at a United States Post
8 Office in Modesto, California. At the time of application, SETH provided a California driver's license
9 xxxx1479. On December 21, 2016, the Bureau of Consular Affairs / Office of Legal Affairs sent SETH
10 a letter informing him that his application was denied because he had an active warrant in his name.

11 On January 24, 2017, just over one month later, SETH filled out an application for a United
12 States passport and falsely identified himself as his brother. SETH used his brother's California driver's
13 license (xxxx5185) and his brother's birth certificate, as proof of citizenship and identity. SETH used
14 his own photograph in this passport application, under his brother's name. A facial recognition search
15 revealed the December 21, 2016 passport application denial. SETH used the same photograph on both
16 December 2016 and January 2017 applications.

DISCUSSION

I. The Defendant's Sentencing Guidelines Calculation.

As set forth in the PSR and the written plea agreement, the Sentencing Guidelines calculations for the defendant's offense level is as follows:

- | | | |
|----|--|-----|
| a. | Base Offense Level, U.S.S.G. § 2L2.2 | 8 |
| b. | Specific offense characteristics under U.S.S.G. Ch. 2 | N/A |
| c. | Acceptance of Responsibility:
If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a two-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing. | - 2 |
| d. | Adjusted Offense Level: | 6 |

1 **II. Plea Agreement**

2 The plea agreement contemplates a sentence within the range associated with the Guideline
 3 calculation. The parties agree that the defendant should be subject to the following search condition:

4 The defendant shall submit his person, residence, office, vehicle, electronic devices and
 5 their data (including cell phones, computers, and electronic storage media), and any
 6 property under defendant's control to a search. Such a search shall be conducted by a
 7 United States Probation Officer or any federal, state, or local law enforcement officer at
 8 any time, with or without suspicion. Failure to submit to such a search may be grounds
 9 for revocation; the defendant shall warn any residents that the premises may be subject to
 10 searches.

11 **III. SECTION 3553(A) FACTORS**

12 Title 18, United States Code, section 3553(a) directs courts to consider a number of factors in
 13 determining an appropriate sentence. *See United States v. Booker*, 543 U.S. 220 (2005). In this case,
 14 these factors indicate that a sentence of one year of custody is sufficient, but not greater than necessary,
 15 to achieve the goals of sentencing. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008).

16 The key 3553(a) factors here are the nature and circumstances of the offense and the history and
 17 characteristics of the defendant, § 3553(a)(1), the need for the sentencing goals to reflect the seriousness
 18 of the offense, promote respect for the law, and to provide just punishment, § 3553(a)(2)(A), and the
 19 need to provide adequate deterrence to criminal conduct, § 3553(a)(2).

20 **A. The Nature and Circumstances of the Offense and Seriousness of the Offense
 21 Support the Recommended Sentence.**

22 The defendant applied for a passport and when that passport application was denied due to the
 23 defendant's active warrant status, the defendant did not choose to take care of the warrant and re-apply
 24 for the passport once the warrant was cleared. Instead, the defendant chose to apply for passport under
 25 his brother's name, using his brother's birth certificate and driver's license, with the intent of inducing
 26 the government to provide him with a passport. The defendant clearly attempted to defraud the United
 27 States by falsely presenting himself to the San Francisco passport office on the third floor of the federal
 28 building at 450 Golden Gate Avenue and, by submitting the false application and his brother's
 identification documents, committed a serious crime.

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1 **B. The History and Characteristics of the Defendant Support the Recommended
2 Sentence.**

3 The defendant has a long history of criminal conduct, starting when he was a juvenile. PSR ¶¶
4 32, 33, and 40. It appears that this is the defendant's first federal offense as most of his convictions stem
5 from conduct in his home town of Stockton, CA. The defendant was convicted of trafficking in
6 marijuana in Lucas County, OH in 2012.¹ This was the conviction that prompted the active warrant
7 against the defendant for which the State Department denied the defendant's passport application. There
8 has not been much time in the defendant's adult life when he was not in custody or on probation.
9 Therefore, the recommended sentence is appropriate in view of the defendant's long criminal history.

10 **CONCLUSION**

11 For the reasons set forth above, the United States respectfully requests that the Court sentence
12 the defendant to a term of three years probation and the special conditions of probation of three months
13 community confinement to be followed by three months of home detention, among the other
14 recommended conditions, a \$125 mandatory special assessment, and any fine the Court determines is
15 appropriate.

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17 DATED: January 24, 2018

Respectfully submitted,

18 ALEX G. TSE
19 Acting United States Attorney

20 _____
21 /s/
22 DENISE M. OKI
23 Special Assistant United States Attorney
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27 ¹ The government has reason to believe that there may be additional convictions by the defendant
28 in Lucas County, OH. However, the government is not in a position to assert beyond a preponderance
of evidence that the "Daniel Seth" convicted in OH is the defendant "Da Seth." The government
therefore defers to Probation's criminal history report reflected in the PSR.